

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

GODSON ERUCHALU,

Plaintiff,

v.

U.S. BANK, NATIONAL ASSOCIATION;
U.S. BANK HOME MORTGAGE; U.S.
BANK HOME MORT OUTSOURCING;
NATIONAL DEFAULT SERVICING CORP;
MERSCORP; TIFFANY & BOSCO PA;
FIRST OPTION MORTGAGE,

Defendants.

Case No. 2:12-cv-01264-MMD-VCF

ORDER

(Plf's Emergency Motion for
Reconsideration – dkt. no. 116; Plf's
Motion to Shorten Time – dkt. no. 117; Plf's
Motion to Set Aside Judgment – dkt. no.
118; Plf's Emergency Motion for Injunctive
Relief – dkt. no. 119; Plf's Motion to Stay
Foreclosure – dkt. no. 120)

I. SUMMARY

Before the Court are several of Plaintiff's motions: Emergency Motion for District Judge to Reconsider Order on Motion for Permanent Injunction, Order on Motion to Stay Foreclosure, Order on Motion to Strike (dkt. no. 116), Motion to Shorten Time for Order to Set Aside Judgement (sic) or Order for Fraud upon the Court (dkt. no. 117), Motion to Set Aside Judgement (sic) or Order for Fraud upon the Court (dkt no. 118), Emergency Motion for Temporary/Permanent Injunctive and Declaratory Relief and to Stay Foreclosure (dkt. no. 119), and Motion to Stay Foreclosure (dkt. no. 120.)¹ For the reasons discussed below, the motions are denied.

¹Docket numbers 116 and 117 are identical but filed twice pursuant to the Clerks' Office's standard policy to file a single motion with multiple requests for relief. Similarly, Docket numbers 118, 119, and 120 are identical as well.

1 **II. BACKGROUND**

2 This case arises from Plaintiff's purchase of real property in Clark County,
3 Nevada, and the subsequent non-judicial foreclosure proceedings. The facts of this case
4 are extensively recounted in the Court's prior orders. Relevant to the instant motion is
5 that on December 17, 2013, the Court granted in part and denied in part Defendants'
6 Motion to Dismiss. (Dkt. no. 99.) The Court also denied Plaintiff's Motions for
7 Temporary/Permanent Injunctive Relief and Motion to Stay Foreclosure Sale. (Dkt. no.
8 100.) On January 16, 2014, Plaintiff appealed both those orders. On January 23, 2014,
9 the Ninth Circuit accepted jurisdiction over the appeal challenging the Court's denial of
10 Plaintiff's Motions for Temporary/Permanent Injunctive Relief and Motion to Stay
11 Foreclosure Sale. On February 3, 2014, Plaintiff filed the motions referenced above.

12 **III. DISCUSSION**

13 **A. Legal Standard**

14 Under Rule 60(b), a court may relieve a party from a final judgment, order or
15 proceeding only in the following circumstances: (1) mistake, inadvertence, surprise, or
16 excusable neglect; (2) newly discovered evidence; (3) fraud; (4) the judgment is void; (5)
17 the judgment has been satisfied; or (6) any other reason justifying relief from the
18 judgment. *Stewart v. Dupnik*, 243 F.3d 549, 549 (9th Cir. 2000). A motion for
19 reconsideration must set forth the following: (1) some valid reason why the court should
20 revisit its prior order; and (2) facts or law of a "strongly convincing nature" in support of
21 reversing the prior decision. *Frasure v. United States*, 256 F.Supp.2d 1180, 1183 (D.
22 Nev. 2003). On the other hand, a motion for reconsideration is properly denied when the
23 movant fails to establish any reason justifying relief. *Backlund v. Barnhart*, 778 F.2d
24 1386, 1388 (9th Cir. 1985) (holding that a district court properly denied a motion for
25 reconsideration in which the plaintiff presented no arguments that were not already
26 raised in his original motion)). Motions for reconsideration are not "the proper vehicles for
27 rehashing old arguments," *Resolution Trust Corp. v. Holmes*, 846 F.Supp. 1310, 1316
28 (S.D. Tex. 1994) (footnotes omitted), and are not "intended to give an unhappy litigant

1 one additional chance to sway the judge.” *Durkin v. Taylor*, 444 F.Supp. 879, 889 (E.D.
2 Va. 1977).

3 Ordinarily the filing of a notice of appeal “divests the district court of its control
4 over the aspects of the case involved in the appeal,” including any subsequently filed
5 motions to reconsider. See *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58
6 (1982); see also *United States v. Vroman*, 997 F.2d 627 (9th. 1993). Federal Rule of
7 Civil Procedure 62(c) codifies an exception to this basic principle: it allows a district court
8 to “suspend, modify, restore, or grant an injunction on terms for bond or other terms that
9 secure the opposing party’s rights” while an appeal is pending. Fed. R. Civ. P. 62;
10 *Natural Res. Def. Council, Inc. v. Sw. Marine, Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001)
11 (recognizing that a district court “retains jurisdiction during the pendency of an appeal to
12 act to preserve the status quo”). “The standard for evaluating stays pending appeal is
13 similar to that employed by district courts under Fed. R. Civ. P. 65 in deciding whether to
14 grant a preliminary injunction.” *Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir. 1983).

15 Under Rule 65 of the Federal Rules of Civil Procedure, an injunction is “an
16 extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is
17 entitled to such relief.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). A
18 plaintiff seeking a preliminary injunction must establish: (1) a likelihood of success on the
19 merits, (2) a likelihood of irreparable harm in the absence of preliminary relief, (3) the
20 balance of equities tips in their favor, and (4) an injunction is in the public interest. *Id.* at
21 20; *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010).

22 **B. Analysis**

23 Initially, the Court finds that these motions do not constitute an emergency or
24 require an expedited briefing schedule. Additionally, the Court does not require a
25 response from Defendants as Plaintiff’s arguments are facially meritless.

26 **1. Motion to Reconsider**

27 Although framed as five different requests, all of Plaintiff’s motions seek the same
28 relief — namely a preliminary injunction and postponement of the foreclosure sale. To the

1 extent that Plaintiff requests reconsideration of the Court's prior order, Plaintiff's appeal
2 has stripped this Court of jurisdiction to entertain that request. *See United States v.*
3 *Vroman*, 997 F.2d 627. Therefore, the request is not properly before the Court.

4 **2. Motion for Injunctive Relief and to Postpone Foreclosure Sale**

5 The Court recognizes that, if granted, the new motion for injunctive relief would
6 obviate any appeal of the prior denial. However, to the extent that Plaintiff's request is a
7 new motion that the Court would have jurisdiction over, the motion is denied. To support
8 his assertion that he is likely to succeed on the merits of his claims, Plaintiff again
9 repeats the oft rejected arguments, such as securitization nullified the Deed of Trust,
10 extinguished the security, or irreparably split the note from the deed of trust, or that
11 MERS' nominee status makes MERS a sham beneficiary and absolves Plaintiff of any
12 responsibility under the deed of trust. He cannot legally succeed based on those
13 arguments. Plaintiff again makes unsubstantiated claims of mediator misconduct (dkt.
14 no. 118 at 4) and notary fraud (*id.* at 8). New to this motion is that Plaintiff now claims
15 there has been a fraud on the court, but still fails to show how he is likely to succeed on
16 the merits of the case. He simply has not carried his burden.

17 The procedural history of this case has been complicated with Plaintiff's filing his
18 Second Amended Complaint ("SAC"), attempting to cure prior deficiencies identified by
19 the Court. (Dkt. no. 104.) Defendants have answered the SAC rather than filing another
20 motion to dismiss. (Dkt. no 107.) Assuming for the purposes of this motion that any one
21 of the SAC's claims would allow Plaintiff to remain in his home, a foreclosure sale would
22 necessarily cause irreparable harm. However, Plaintiff has still not shown the remaining
23 three requirements to secure injunctive relief. Therefore, Plaintiff has not carried his
24 burden and the new motion for injunctive relief and to postpone the foreclosure sale is
25 denied.

26 **3. Stay Pending Appeal**

27 In liberally construing Plaintiff's *pro se* filings, the Court alternatively construes
28 Plaintiff's motions as a request for a stay or injunction pending appeal pursuant to

1 Federal Rule of Appellate Procedure 8(a)(1). For the reasons already discussed,
2 specifically Plaintiff's failure to show likelihood of success on the merits, balance of
3 equities in his favor, or the public interest, the request for a stay pending appeal is
4 denied. Plaintiff may seek a stay of this Court's order from the Ninth Circuit Court of
5 Appeals, as necessary.

6 **IV. CONCLUSION**

7 It is therefore ordered that Plaintiff's Emergency Motion for District Judge to
8 Reconsider Order on Motion for Permanent Injunction, Order on Motion to Stay
9 Foreclosure, Order on Motion to Strike (dkt. no. 116) is denied.


10 It is further ordered that Plaintiff's Motion to Shorten Time for Order to Set Aside
11 Judgement (sic) or Order for Fraud upon the Court (dkt. no. 117) is denied.

12 It is further ordered that Plaintiff's Motion to Set Aside Judgement (sic) or Order
13 for Fraud upon the Court (dkt no. 118) is denied.

14 It is further ordered that Plaintiff's Emergency Motion for Temporary/Permanent
15 Injunctive and Declaratory Relief and to Stay Foreclosure (dkt. no. 119) is denied.

16 It is further ordered that Plaintiff's Motion to Stay Foreclosure (dkt. no. 120) is
17 denied.

18 DATED THIS 6th day of February 2014.

19
20 
21 MIRANDA M. DU
22 UNITED STATES DISTRICT JUDGE
23
24
25
26
27
28